

RESPONSE UNDER 37 C.F.R. § 1.111
U.S. Application No. 10/743,780
Attorney Docket No. Q79166

REMARKS

General Remarks

Claims 1-13 are all the claims currently pending in the application.

In the current Office Action, the Examiner indicates that the finality of the October 21, 2004 Office Action has been withdrawn.

Allowed Claims

Claims 5-13 are allowed.

Obviousness-type Double Patenting

Claims 1-4 stand rejected under the judicially-created doctrine of obviousness double patenting over Claims 1 and 8 of Hayakawa et al., U.S. Patent No. 6,709,088 (“Hayakawa ‘088”), from which the present application claims benefit.

Without commenting on the substantive merits of the Examiner’s rejection, but instead to expedite prosecution of the present Application, Applicants are submitting herewith a terminal disclaimer to obviate the above-noted obviousness-type double patenting rejection.

As noted in *Quad Environmental Technologies*¹, the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting and raises neither presumption nor estoppel on the merits of the rejection. It is improper to convert this simple expedient of “obviation” into an admission or acquiescence or estoppel on the merits.

Applicants therefore respectfully request that the rejection of Claims 1-4 be reconsidered and withdrawn.

¹ *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ.2d 1392, 1394, 1395 (Fed. Cir. 1991).

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Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned attorney at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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